



January 20, 2009

Texas Department of Insurance (TDI)
Division of Workers' Compensation
7551 Metro Center Dr., Ste. 100
Austin, Texas, 78744

ATTN: Ms. Ronnie Glenn

Dear Ms. Glenn:

As the president of the Texas Pain Society, a professional organization representing some 250 physicians practicing pain medicine in the state of Texas, I was recently apprised of rather alarming TDI correspondence with one of our members. In this letter, the ODG *guidelines* are cited noting that oral fentanyl is not recommended by the ODG for the treatment of injured workers. A statement follows that indicates FDA approval for oral fentanyl only for cancer pain. Paraphrasing, the letter then suggests that the physician must promptly explain the rationale for such prescribing-and suggests that unless these workers comp patients have cancer, these medications are not indicated.

The closing section is very threatening, that if a response is not forthcoming within one week, the physician may be subject to subpoena and/or a monetary fine up to \$25,000 per day.

This letter is stunningly threatening and in my view, at least, highly inappropriate. This doctor is attempting to provide pain care to an injured worker suffering in an extreme amount of pain, and on behalf of the Texas Pain Society membership, I must strongly object to this type of highly threatening inquiry. The ODG are treatment "guidelines," not hard/exception proof rules. Indeed, ODG and similar treatment guidelines specifically allow for physician judgment and deviation from the guidelines in certain cases. Furthermore, it is my impression from reading the Texas Labor Code, section 413.011, and TDI/DWC rule 137.100, that as a prudent physician practicing within the standard of care of my specialty, I am to consider the OGD as "guidelines" for treatment and not rules. It is apparent that this law was written in such a manner as to allow the physician the right to use medications not in the OGD if in their professional opinion it is necessary.

Finally, as the TDI well knows, off label use of many medications is common, and in many cases is medically appropriate. Physicians understand the need for review of such uses, and/or pre-approval in such cases, particularly with expensive medications. A medical review and/or preapproval process is considerably different than the threatening letter, with a one week response time sent to our TPS members.

Although I do not feel compelled to discuss the details of this case, I would suggest that the TDI consider a careful review of these cases, it is quite possible that in forcing a discontinuation of “expensive” opioid analgesics, you may force the patient back into the cycle of emergency room visits, further surgery, hospital admissions, etc., and perhaps in some cases of extreme pain, patients might commit suicide. There may be dire consequences to altering an effective chronic pain treatment regimen abruptly without careful consideration of those consequences.

I would be happy to discuss this issue with you in further detail at anytime.

Sincerely,



Allen W Burton, MD
President TPS

cc:
Ms. Victoria Soto, J.D
111 Congress #400
Austin, Texas 78701

Dr. Aaron Calodney
Past President – Texas Pain Society
PO Box 130459
Tyler, Texas, 75713

P.O. Box 201413 • Austin, Texas 78720-1413 • Ph 512.535.0010 • Toll Free 866.324.7922 • Fax 866.235.2557 • www.texaspain.org

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